Supreme Court, U. S.
FILED
MAY 5 1975
MICHAEL RODAK, JR., CLERK

In The

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1391

ARTURO JAIME LERMA SANCHEZ

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

BRIEF FOR PETITIONER ARTURO JAIME LERMA SANCHEZ

Petition for Writ of Certiorari to Review a Decision of the United States Court of Appeals for the Fifth Circuit

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To the Honorable Judges of Said Court:

PRIOR OPINION

The trial court for the Northern District of Texas filed a written opinion overruling Petitioner's Motion for New Trial which was reported as *United States of America v. Jaime Lerma Sanchez and Carlos Guillermo Salinas, Jr.*, 380 F.Supp. 1260 (D.C. N.D. Tex. 1973). The only other prior opinion and the one subject to review is *United States of America v.*

Sanchez, 508 F.2d 388 (5th Cir. 1975). (See Appendix "A").

JURISDICTION

The judgment in the trial court was entered June 25, 1973, and the opinion in the United States Court of Appeals for the Fifth Circuit was decided on February 24, 1975. A rehearing in that court was overruled without written opinion on April 4, 1975.

The statutory jurisdiction of this Petition is 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

I. Did the trial court err in overruling petitioner's timely filed Motion To Transfer the case pursuant to Rule 21(b) of the Federal Rules of Criminal Procedure?

II. Did the trial court violate petitioner's Sixth Amendment rights by denying substantially all his timely filed Bill of Particulars filed pursuant to Rule 7(f) of the Federal Rules of Criminal Procedure?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The principal Constitutional provisions involved are the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Rules 21(b) and 7(f) of the Federal Rules of Criminal Procedure.

STATEMENT OF THE CASE

The Petitioner was indicted by a federal grand jury for the Northern District of Texas on April 4, 1973; charging

him with conspiracy to violate Title 21, U.S.C. §841(a)(1). Petitioner was named in only one count of the indictment and was never mentioned in any of the ten overt acts alleged in the indictment.

The Petitioner resided in Laredo, Texas and subsequent to the indictment was arrested there and transferred to the Tarrant County jail to await trial. He remained incarcerated in the Tarrant County jail under a $250,000.00 bond until he was transferred the weekend of trial to the Taylor County jail, Abilene, Texas.

Petitioner timely filed a Motion to Transfer the trial of this cause to the Southern District of Texas as provided in Rule 21(b), Fed.R.Crim.P. He also timely filed as one of his many pre-trial motions a Bill of Particulars pursuant to Rule 7(f), Fed.R.Crim.P. The trial court overruled both those and other pre-trial motions at a hearing conducted on May 8, 1973. Trial was had on May 21, 1973, in Abilene, Texas, Abilene Division of the Northern District of Texas.

REASONS FOR GRANTING WRIT

I. The trial court abused its discretion in denying Petitioner's Motion to Transfer filed in accordance with Rule 21(b), Fed.R.Crim.P. because the balance of inconvenience of the trial forum in Abilene, Texas lay totally in favor of Petitioner. (Germane to Question No. I).

II. The ruling of the trial court in denying Petitioner's Bill of Particulars filed pursuant to Rule 7(f), Fed. R.Crim.P., in light of the language and information in the indictment,

violated Petitioner's Sixth Amendment rights to the Constitution wherein he is guaranteed the right to a fair, speedy, public trial. (Germane to Question No. II).

ARGUMENT

I.

Did the trial court err in overruling petitioner's timely filed Motion To Transfer filed pursuant to Rule 21 (b), Fed. R. Crim. P.?

The original indictment in this case charged some thirteen individuals in a wide-spread conspiracy to distribute cocaine. At the time of arraignment, ten of the thirteen defendants had entered pleas of guilty and one other defendant was in custody in Mexico and was not deported to the United States to answer these particular charges. Only the Petitioner and co-defendant Salinas entered pleas of not guilty thereby necessitating a trial on the merits in his case.

The indictment and all evidence in the hands of the Government pointed to the fact that all acts and activities of the Petitioner relative to the alleged conspiracy took place in or around Laredo, Texas or Corpus Christi, Texas; both of which are located in the Southern District of Texas. At the time of the presentation of the pre-trial Motion for Transfer the Government did not answer said motion in writing or controvert in any manner the contention by Petitioner that a more convenient forum in the interest of justice for his trial would be in the Southern District of Texas. In fact the Government had no intention whatsoever of being able to bring any evidence to the trial court which showed Petitioner

ever entered the Northern District of Texas or physically left Laredo or Corpus Christi, Texas.

At the pre-trial hearing conducted on May 8, 1974, Petitioner presented affidavits of potential witnesses who lived in the Southern District of Texas. This was done in an effort to demonstrate to the trial court the absolute, total inconvenience to Petitioner to have the trial in the Northern District of Texas. These affidavits contained as much information as was possible under the circumstances considering the very limited pre-trial discovery granted by the Government and the very limited information which was available to the Petitioner relative to the specific acts he is alleged to have committed. These affidavits, along with the fact that a significant number of the Government's own witnesses lived in the Southern District of Texas, demonstrated to the trial court that in the interest of justice the trial should be transferred from the Northern District of Texas. The court, however, overruled said motion and trial was set in the Abilene Division of the Northern District of Texas.

Venue in this case is determined by Rule 18, Fed.R.Crim.P. which provides:

> "The prosecution shall be had in a district in which the offense was committed."

It is the law in federal court that venue of prosecution for conspiracy lies in the district where the agreement was made or an overt act in furtherance of the conspiracy was committed. *Hyde v. United States*, 32 S.Ct. 793 (1912); *Miller v. Connally*, 354 F.2d 206 (5th Cir. 1965); *United States v.*

Williams, 424 F.2d 344 (5th Cir. 1970). Therefore, venue was multi-district in scope and venue could under all applicable law have properly lied in the Southern District of Texas.

Since venue could properly be in the Southern District of Texas a transfer under Rule 21(b), Fed.R.Crim.P., would be proper if in the discretion of the trial court the convenience of witnesses and the interest of justice required it. The question, therefore, is did the trial court abuse its discretion in denying Petitioner's timeily filed Motion to Transfer.

This Court in *Platt v. Minnesota Mining and Manufacturing Co.*, 84 S.Ct. 769 (1964), set out certain factors to be taken into consideration by the trial court in determining whether to grant a transfer or not. Among the factors to be considered are:

1. Location of possible witnesses;
2. Location of events likely to be in issue;
1. Relative expense to the parties;
4. Relative disaccessibility of the place of trial;
5. Any other special element which might affect the transfer.

The cases throughout the various circuits, in interpreting Rule 21(b), Fed.R.Crim.P., and applying the teachings of *Platt v. Minnesota Mining and Manufacturing Co.*, supra, speak generally in terms of the trial court seeking to strike a balance between the inconvenience to the Government and the inconvenience to the defendants. They say in their decisions that

if the balance is in favor of the defendant, the motion to transfer should be granted. *Jones v. Gasch*, 404 F.2d 1231 (D.C. Cir. 1967).

A look at the factors set out in *Platt v. Minnesota Mining and Manufacturing Co.*, supra, show very definitely that the balance of inconvenience lay in favor of granting Petitioner's Motion to Transfer the trial to the Southern District of Texas. A brief look at the individual factors will show this very definitely:

1. LOCATION OF POSSIBLE WITNESSES. The Petitioner and co-defendant Salinas were the only individuals put to trial by the Government, all other co-defendants having pled or were not available to answer these charges. Many of the Government's witnesses who they intended to call lived in the Southern District of Texas. In fact the chief investigating officer, Loy Garcia, was from the Laredo Division of the Bureau of Narcotics and Dangerous Drugs.

All witnesses for the Government no matter where they lived would have to be put up in motels because the case was going to be tried in the Abilene Division of the Northern District of Texas.

All of Petitioner's witnesses lived in or around Laredo, Texas, and/or Corpus Christi, Texas. They would have to be brought to trial after the Government's testimony because of the many pre-trial motions for discovery which were denied by the trial court.

The location of witnesses very definitely lay in favor of the Motion to Transfer.

2. LOCATION OF EVENTS LIKELY TO BE IN ISSUE. All evidence produced by the Government and in the hands of the Government at the time of the hearing on May 8, 1973, pointed to the fact that Petitioner's involvement in the alleged conspiracy would be in and around Laredo, Texas and/or Corpus Christi, Texas. Both cities which are located in the Southern District of Texas. The Government had no evidence whatsoever indicating that the Petitioner ever entered the Northern District of Texas.

Therefore, the events likely to be in issue were all located in the Southern District of Texas and this pointed very heavily in the direction of granting the Motion to Transfer.

3. RELATIVE EXPENSE TO THE PARTIES. The Government would have the expense of bringing witnesses from all over the state and putting them up in motels in Abilene, Texas. Therefore, regardless of the location of the trial the Government had an initial expense of putting them up either in Abilene, Texas or some other location if the court saw fit to grant the Motion to Transfer.

However, if the trial court would have granted a transfer to the Laredo Division of the Southern District of Texas, Petitioner would have had numerous witnesses who otherwise were not available at trial in Abilene, Texas. They could stay at their homes and jobs and be available to testify for the Petitioner when needed, but the expense and inconvenience of going to Abilene, Texas eliminated them completely from any availability whatsoever to testify on behalf of Petitioner. The Petitioner brought this inconvenience to the attention of

the trial court by way of the several sworn affidavits which were presented and not controverted by the Government at the hearing on May 8, 1973.

Therefore, it can be seen from this that the relative expense to the parties lay in favor again in granting the Motion to Transfer to the Southern District of Texas.

4. ACCESSIBILITY OF PLACE OF TRIAL. Abilene, Texas is not one of the most accessible cities in Texas and in fact is extremely inaccessible from the Southern half of Texas where Petitioner's witnesses live and would have to travel from in order to testify at trial.

Whereas many of the Government's witnesses already lived in the Southern District of Texas and would be more accessible to a trial in the Southern District of Texas those witnesses coming from Dallas/Fort Worth had very easy access to the Southern District of Texas because of the location of the DFW Airport and its interconnecting flights throughout the state.

Therefore, the place of trial again pointed to the direction of the trial court granting the Motion to Transfer.

5. OTHER FACTORS. The overall picture shows that for Petitioner to be put to trial in Abilene, Texas some four hundred miles away from the place of the alleged activities of his involvement in the conspiracy was very harmful to Petitioner and very damaging to his ability to present a fair and adequate defense. This is very vital in light of the very minimal pre-trial discovery given to Petitioner. Because of the lack of

information available he had an extreme burden in preparing a fair defense for trial in Abilene, Texas.

The overall picture then, in light of the above, points to the direction of granting the Motion to Transfer.

An application then of the facts of Petitioner's individual case to the mandates and teachings of this Court show that when all of the factors set out in *Platt v. Minnesota Mining and Manufacturing Co.*, supra, are applied the balance lay in favor of granting Petitioner's Motion to Transfer. The trial court, even after the hearing in denying the Motion to Transfer, violated Petitioner's statutory and constitutional rights to a fair trial and adversely affected his ability to produce a fair defense in his behalf and therefore his conviction should be reversed by this Honorable Court.

II.

Did the trial court violate petitioner's Sixth Amendment rights by denying substantially all of his timely filed Bill of Particulars filed in accordance with Rule 7(f), Fed. R. Crim. P.?

The indictment against Petitioner charges him only in Count I with conspiracy to violate Title 21, U.S.C. §841(a)(1). Ten (10) overt acts are set out by the Government but none of the acts mention Petitioner or in any way inform him of what specific act he is alleged to have committed. Petitioner, therefore, in order to properly prepare his defense filed a Bill of Particulars pursuant to Rule 7(f), Fed.R.Crim.P. The trial court, after a hearing on May 8, 1973, denied essentially all of Petitioner's Bill of Particulars. The Government, prior to

trial, gave only minimal discovery and only on the day of trial did it furnish Petitioner with information as to alleged acts of misconduct on the part of Petitioner.

As this Court well knows, the purpose of a Bill of Particulars is to inform a person of the nature of the charges against him with sufficient precision to enable him to prepare his defense and to avoid or minimize the danger of surprise at trial. *United States v. Sullivan,* 421 F.2d 676 (3rd Cir. 1970); *United States v. Murray,* 297 F.2d 817 (2nd Cir. 1962). The information sought by Petitioner was not evidentiary in nature; all that was requested was certain specific information concerning his alleged activities in the conspiracy so that he might properly prepare his defense.

The indictment provided Petitioner with no information on which to base a defense. All that was presented to him was that he is alleged to have been involved in a wide-spread conspiracy from September, 1972, up to and including February 14, 1973. This information is so scant and vague as to be essentially no information at all. And as a result of this lack of information Petitioner was required to file his Motion for Bill of Particulars.

The courts of various circuits throughout the United States have required the Government to respond to a defendant's motion for bill of particulars where their information, like in this case, has been so vague and so scant so as to not adequately apprise him of the specific charges against him. The Government has even been required to give the times, dates, and places of the alleged activities and it has been

held to be an abuse of discretion by the trial court to fail to require the Government to respond to a Bill of Particulars in this type of situation. *Cefalu v. United States*, 234 F.2d 522 (10th Cir. 1956); *United States v. Tanner*, 279 F.Supp. 457 (D.C. Ill. 1967).

The trial court in this case should have required the Government to respond to the Petitioner's Bill of Particulars, especially in light of the very, very limited pre-trial discovery granted by the trial court. The only reason given by the Government in its opposition to the Bill of Particulars was that this was one of the "special cases" in which the Government would not follow its normal liberal discovery rules and would seek to resist at every turn Petitioner's attempt to discover the evidence the Government intended to use against him. The lack of specific information given to the Petitioner as a result of the denial of his Bill of Particulars coupled with the denial of transfer violated his Sixth Amendment rights to a fair trial and as such requires reversal of this case and remand to the district court for a new trial.

CONCLUSION

For the reasons set forth above, it is respectfully prayed that a Writ of Certiorari be granted to review the judgment of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A copy of the above and foregoing Petition for Writ of Certiorari on behalf of Petitioner, Arturo Jaime Lerma Sanchez, has on this the 5th day of May, 1975, been mailed, postage prepaid, to Mr. Frank McCown, United States Attorney for the Northern District of Texas, marked to the attention of Mr. Alex H. McGlinchey, Assistant United States Attorney, United States District Courthouse, Tenth and Lamar, Fort Worth, Texas.

Phil Burleson